Supreme Court, U.S.
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No. 05-860

IN THE

Supreme Court of the United States

PETER J. MUTNICK,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA,
ALAMEDA COUNTY, et al.,
Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of California, First Appellate District, Division One

REPLY TO BRIEF IN OPPOSITION

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WHAT THE OPPOSITION OF THE PARTIES REVEALS

The parties to the original and underlying lawsuit are both large public entities and state actors. They have now jointly reiterated their various arguments before the Supreme Court of the United States. Now the Court can see for itself what I and many others have been up against: Orwellian misstatements of fact and law that leave one puzzled and discouraged concerning the integrity of our democracy.

For starters, the Honorable Court need only actually read the Ruling of Superior Court (Appendix A of the Petition). Contrary to the bizarre claim of the parties, in which they persist, the Superior Court did not treat my Motion as a Motion to Vacate, but on the contrary DENIED it for lack of jurisdiction. It thereafter purported to rule on the merits in dicta, after it was *functus officio* to do so.

Their misreading of the Ruling is not a sincere dyslexia on the part of the parties – they have a motive for their twisted reasoning. They want to assert and have asserted that the matter is res judicata in another parallel case (RG05230715) now pending in Alameda County Superior Court. The matter cannot be res judicata unless there was a ruling on the merits, and so the parties have argued in the other case that there was such a ruling. What is so disturbing is that the parties are willing to lie boldfacedly in the attempt to create a legal myth that they expect everyone to believe. What is even more disturbing is that this strategy has been employed by the parties again and again with such great success, in this matter and many others, causing many to lose faith in our system of government altogether.

The parties assert there was no prejudice to me. The prejudice to me was that I could not seek redress on the merits, because the Motion was denied for lack of jurisdiction, and if I argued correctly against that lack of jurisdiction, an appellate court would be strongly inclined in a mere writ proceeding to regard my jurisdictional argument as moot, since the matter was without merit according to the strongly worded, but entirely incorrect, argument of the Superior Court. None of my arguments, which would demonstrate that incorrectness, however, would ever be considered. An appeal was never available, and I was confined to seeking a writ, which is always more discretionary than an appeal. Hence, it appears on the face of the record that the strategy of the Superior Court was intended precisely to prejudice me in the worst way possible, by foreclosing completely any possibility of a genuine redress of grievances. In short, the trial court was in league with the parties and similarly willing to lie and deceive to achieve its desired end, which is the political impermeability of the bureaucracy to its critics.

The parties continue to present their conveniently ignorant view of the law. They ignore my obviously correct argument that *Gardner v. Trevaskis,* 158 Cal.App.2d 410 (1958), the authority relied on by the trial court for its Ruling, applies only to judgments subject to appeal. A voluntary dismissal is not subject to an appeal, nor is it subject to a writ. The parties ignore my correct argument that this was already established as the law of the case in the previous ex parte motion by Carl Friberg, Anne Wagley, and Kriss Worthington, which they mention. On the merits, they completely ignore my argument on the Brown Act, when viewed correctly in the context of Evidence Code Sections 1152 and 1154. The parties completely ignore my correct argument that the settlement offers were presented at City Council

meetings, according to the undisputed evidence in the Motion, that were not by any stretch of the imagination meetings at which a final approval of a settlement offer was pending. Many of these reports were oral and prior to any written agreement. They could not conceivably have resulted in a final approval, and so they were not covered under California Government Code Section 54957.1(a)(3), which is the disingenuous argument of the parties.

The only argument of the parties that is not in its entirety an Orwellian distortion of the facts and the law is the following, on page 4 of their Opposition: "Mutnick tries to bring himself within the ambit of either subdivision (b) or (c), arguing that the California courts have denied him due process. However, he cites no authority from any court in support of this argument." The first sentence here is ambiguous. If the parties mean that I cited no authority for the proposition that a clearly untenable state court ruling is judiciable by the High Court, then that sentence is another lie, as well, for I do cite *Vachon v. New Hampshire*, 414 U.S. 478 (1974), on page 30 of my Petition. Granted, however, I cite it in passing, so let me take this opportunity to quote the key passage of the holding, at page 480:

> In these circumstances, the conviction must be reversed. "It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process." *Harris v. United States*, 404 U.S. 1232, 1233 (1871). (DOUGLAS, J., in chambers); *Thompson v. Louisville*, 362 U.S. 199 (1960); *Johnson v. Florida*, 391 U.S. 596 (1968); see also *Adderley v. Florida*, 385 U.S. 39, 44 (1966).

The situation in this matter is exactly parallel to the situation in *Vachon*. We may paraphrase it thusly:

> "It is beyond question, of course, that a clear deprivation of First Amendment rights based on a record lacking any relevant (or tenable) justification under state law for the deprivation violates due process."

Now, the alternative meaning of the previous quote from the Opposition Brief of the parties is that I cited no authorities in support of this proposition, as the Court did cite authorities in support of its proposition in *Vachon*, even though "it is beyond question, of course." It is beyond question because it appears on the face of the Fourteenth Amendment.

HOW WE MEET THE THRESHOLD REQUIREMENTS FOR CERTIORARI

Vachon v. New Hampshire, supra, is far from settled law, but it is precedent. Justice Rehnquist dissented in *Vachon,* although in a very reasoned way that invited further inquiry. There is a long string of cases related to *Vachon,* which, like *Vachon,* defer the task of deciding whether the "pressed or passed upon below rule" is jurisdictional or prudential. Similarly, there is a long history of concern about the demise of the Privileges or Immunities Clause of the Fourteenth Amendment under the weight of *Slaughter-House Cases,* 83 U.S. 36 (1873). This matter brings all these questions involving the comity afforded to state courts and state entities squarely before the Court. For instance, due to being a Pro Se litigant, I lacked the foresight to mention the First Amendment below, but the fundamental rights

of speech, press, assembly, and petition were implicit throughout all of the proceedings.

To my mind, there can hardly be a weightier constitutional question than whether the Court will allow the magnificent legal superstructure which it has fostered to be completely eroded and undermined by Orwellian misconstructions on the part of state actors below, at the grass roots level, where the rubber meets the road.

CONCLUSION

The arguments of the parties are blatantly false, so it is not the arguments themselves that create the vital controversy in this matter, but the fact that they are so false. This is a controversy between public entities who assert their right to be false and citizens who assert their right to be free from such tyranny.

In footnote 1 of their Opposition, the parties challenge my "purport to bring this case on behalf of 'others.'" Again, they falsify. Obviously, what I intended was simply that if we get past this first hurdle of establishing the fraud, which is my own unique task, and are thereafter allowed to seek intervention, then many others will desire to join the Motion for Intervention, and we will at that point seek a competent attorney.

Respectfully submitted,

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